

**Before the  
Federal Communications Commission  
Washington, DC 20554**

In the Matter of	)	
	)	
GLOBAL CROSSING	)	WCB Docket No. 04-424
TELECOMMUNICATIONS, INC.	)	
	)	
Petition for Declaratory Ruling Concerning	)	
Southwestern Bell Telephone, L.P.	)	
Tariff F.C.C. No. 1	)	
	)	
SBC Communications Inc.	)	
	)	
Petition for Declaratory Ruling	)	
Concerning Terminating Switched	)	
Access Charges for Wireless-	)	
Originated Calls	)	

**COMMENTS OF WILTEL COMMUNICATIONS, LLC**

Pursuant to FCC Public Notice DA 04-3865, WilTel Communications, LLC (“WilTel”) hereby submits comments on the petitions referenced above. Taken together, the petitions filed by SBC Communications Inc. (“SBC”) and Global Crossing Telecommunications, Inc. (“Global Crossing”) (individually, “SBC Petition” and “Global Crossing Petition” and together, the “Petitions”) ask the FCC to determine whether Southwestern Bell Telephone Company (“SWBT”) may determine the jurisdiction of a wireless-mobile-originated call by looking at the calling party number (“CPN”) in the call detail records of the call where the actual originating geographic location of the call is unknown. WilTel urges the Commission to reject this proposition and hold that its rules and policies – as well as the provisions of SWBT’s existing interstate access tariff (“Tariff”) – require SWBT to use the most accurate available measurements in the call detail records or, in the absence of such measurements, to rely on

carriers' percentage of interstate usage ("PIU") certifications filed in accordance with FCC rules. Stated directly, where customers roam freely about the country and where phone numbers are ported between landline and wireless services, a phone number implies little about the geographic origin of a call. SWBT's continued use of CPN data means that the company's (and other ILECs') attempts to determine jurisdiction are systematically wrong – in violation of the Commission's rules and the company's Tariffs.

## INTRODUCTION

The issues presented in these Petitions result directly from an outmoded intercarrier compensation regime that allows ILECs such as SWBT to impose substantially higher access charges for "intrastate" services than for identical services in the "interstate" domain. This differentiation between inter- and intrastate services is an historical artifact stemming directly from the history of monopoly in the U.S. telecommunications market. In the pre-divestiture era, access charges were used as a cost recovery mechanism for costs of service regulated by both the federal government and state regulatory entities. As each agency took its own path with regard to regulation and cost recovery, the prices for "interstate" and "intrastate" services diverged, resulting in a hodgepodge of discontinuity and complexity. Where rates for interstate and intrastate access services are identical, there are virtually no jurisdictional disputes. However, in most states there is some (sometimes major) differential between interstate and intrastate pricing,<sup>1</sup> resulting in more disputes.

Given the huge importance of access in the revenue base of ILECs and the cost structure of IXC's, both groups have made substantial efforts to define the jurisdiction of traffic in a manner consistent with their financial interests. In the early 1990s, some IXCs built

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<sup>1</sup> In Texas, for example, the price of an intrastate access minute is ten times higher than the price of the same minute if it is found to lie in the interstate jurisdiction.

sophisticated routing capabilities designed solely to minimize their exposure to intrastate access charges, and ILECs created sophisticated software to track the originating and terminating CPN of calls in defense. Both ILECs and IXCs have wasted substantial time and money in an adversarial process of disputes, PIU audits, analysis and engineering to promote or stop arbitrage between interstate and intrastate access pricing.

The practice of using CPN to partition the access market for purposes of charging two different rates for the same service, while inefficient and wasteful, at one time may have yielded results that were consistent with the law. In other words, if a call originated from a phone number in Dallas and terminated to a phone number in Houston, it was “intrastate” and fell within the jurisdiction of Texas regulators and was subject to Texas access charges. Calls emanating from a 312 area code phone number in Chicago and terminating to a 202 area code phone number in Washington D.C. were presumed to be interstate commerce and subject to FCC-controlled access prices.

However, technological advances and service innovations have rendered these practices illogical and inconsistent with the law. While a phone number may still indicate who is calling, it no longer tells you where the caller is located. For example, Vonage, a provider of IP-originated voice services, allows customers to choose their own area code. A customer that is physically located in California may still choose a local phone number in New York. If that customer moves from California to Florida or London and plugs their phone equipment back into the network, their phone number, CPN and caller ID still reflect the 212 area code but they have geographically moved across the entire continent or across the ocean. In other words, CPN is not an indicator of geographic location, as the Commission recently recognized.<sup>2</sup>

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<sup>2</sup> See *Vonage Holdings Corp. Petition for Declaratory Ruling Concerning an Order of the Minnesota Public Utilities Commission*, WC Docket No. 03-211, FCC 04-267, (rel. Nov. 12, 2004), ¶¶ 26-27 (specifically finding that

Application of CPN to determine geographic location for wireless callers makes even less sense than in the case of IP-originated voice services. The key value proposition of a wireless service is that it un-tethers the customer from geographic constraint. The customer can make phone calls — and identify themselves by their phone number — regardless of their physical location. For example, let's say a customer procures wireless service with a 312 area code, which has traditionally been associated with landlines in downtown Chicago. Under SWBT's interpretation all calls made from this phone to other parts of Illinois would be considered either local or intrastate. However, the purchaser of this phone may move to Atlanta and keep the phone number, go on a business trip to Idaho and call her cousin in Rockford, Illinois, or receive calls from Illinois while vacationing in Florida.

In all of these examples, SWBT's interpretation of its Tariff results in designating calls as "intrastate" when the caller and called party are not geographically located in the same state. CPN doesn't work. Phone numbers indicate who is calling, not where they are calling from. This problem is already significant, but as mobility and service innovation increase the problem gets continually worse. Moreover, incorrect application of intrastate access charges to interstate calls impedes expansion and extension of these services.

These petitions describe one of several situations in which determining the jurisdiction of calls (even under the existing intercarrier compensation regime) is so difficult that the Commission must assert exclusive jurisdiction over them. As in the case of Vonage, the originating point of wireless-originated roaming traffic cannot easily be determined. Mobile service users are roaming more often, and it can't be assumed anymore that the vast majority of their calls will be in the locality where they received their telephone number. Accordingly, the

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telephone numbers are an inadequate means to determine jurisdiction for broadband IP-originated calls, due to mobility of customers).

Commission should rule in this proceeding that SBC's interpretation of SWBT's Tariff and the Commission's rules is inaccurate and inconsistent with the basic policy requirement under today's rules of correctly identifying whether calls originate and terminate in different states or in the same state. In the longer term, the Commission should determine that wireless-originated traffic, like broadband IP-originated traffic, should be subject exclusively to the FCC's jurisdiction and therefore, to the extent it is subject to access charges at all, those charges should be exclusively interstate, not intrastate.

In the interim, the Commission must ensure that, where jurisdiction determines the rate to be paid, jurisdiction is determined correctly. The rate charged by SWBT determines the rate that IXC customers pay the IXC. These customers expect to pay interstate rates for interstate traffic and intrastate rates for intrastate traffic. If the ILEC charges based on the wrong jurisdiction, IXCs are prevented from charging their customers correctly. Accordingly, SWBT must not be permitted to distort the market by imposing intrastate access charges on interstate calls.

### **ARGUMENT**

Neither SWBT's Tariff nor FCC decisions support SBC's conclusion that it can determine the call's jurisdiction by looking at CPN.<sup>3</sup> Without this ability, SWBT is not permitted to base its percentage of interstate usage on CPN.<sup>4</sup> SWBT's Tariff requires it to determine the jurisdiction based on the call detail records, however, and the company should be able to do so accurately based on information other than the CPN. Accordingly, the Commission should find that SWBT must determine the percentage of interstate usage for wireless-originated

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<sup>3</sup> SBC contends that, if SWBT doesn't know the exact geographic location of a wireless caller, FCC rules and SWBT's tariff allow it to rely on the CPN transmitted on the call to determine the jurisdiction of the call. *See, e.g., SBC Petition* at 5.

<sup>4</sup> According to the Tariff, "...where jurisdiction can be determined from the call detail, [SWBT] will bill according to such jurisdiction...". Southwestern Bell Telephone Company, Tariff F.C.C. No. 73, § 2.4.1(A)(2)(b), 10<sup>th</sup> revised page 2-38.1 (effective October 28, 1998).

calls based on this information.

SWBT's Tariff does not support SBC's contention that CPN adequately measures the call's originating location. According to the Tariff, SBC will determine whether traffic is interstate jurisdiction if the jurisdiction can be determined from the call detail. SWBT asserts that the parenthetical language describing how SWBT will calculate the interstate percentage once it has determined the jurisdictional nature of calls<sup>5</sup> somehow proves that SWBT can determine the jurisdiction from the call detail. This circular argument begs the question of whether jurisdiction can be determined from call detail simply by SWBT asserting it to be true.

Nor do FCC rules and policies support SBC's position that SWBT can use CPN to determine the originating location of the call. SBC relies heavily on a 1992 Common Carrier Bureau Order allowing a SWBT tariff containing new jurisdictional determination language to become effective.<sup>6</sup> In that decision, the Bureau did not agree that CPN is always adequate to determine jurisdiction of calls and in fact did not address the CPN issue at all. Rather, it recited the parties' opposing claims, including SWBT's representation that the jurisdiction can be determined from the CPN, and simply found that there were no issues at the time. To the extent that the decision could be interpreted to approve use of CPN to determine jurisdiction, such approval would be limited to the specific facts asserted in that case, including SWBT's representation that jurisdiction can be determined from the CPN. That representation, even to the extent it may have been true then, is not true now. Accordingly, SBC is not correct that the

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<sup>5</sup> The relevant Tariff provision refers parenthetically to interstate terminating access minutes as "(the access minutes where the calling number is in one state and the called number is in another state)". Contrary to SBC's contentions, SWBT is the only RBOC with this language. Other RBOCs don't specify the "calling number" as a means of determining the percentage of interstate usage. *See, e.g.,* Qwest Corporation, Tariff F.C.C. No. 1, § 2.3.10(B)(2)(c), 1<sup>st</sup> Revised Page 2-24 (effective June 30, 2001); Verizon Telephone Companies, Tariff F.C.C. No.1, § 2.3.10(A)(1)(b), 2<sup>nd</sup> Revised Page 2-15.2 (effective December 25, 2002). Moreover, the calling number and called number may be in different states, even if both numbers are assigned to the same area code, if the calling party has traveled to a different state with the wireless phone to which that number has been assigned.

<sup>6</sup> *SBC Petition* at 6-7 (citing *Southwestern Bell Telephone Company Revisions to Tariff F.C.C. Nos. 68 and 73, Transmittal 2182*, Order, DA 92-611, 7 FCC Rcd. 3456 (May 15, 1992)).

Bureau's decision to allow its tariff to become effective proves that CPN is the correct measure on which to base jurisdiction of wireless-originated calls.

Even though jurisdiction cannot be determined based on CPN, SBC correctly suggests that jurisdiction can be determined if there is "accurate and reliable information in the call detail records as to the geographic location of wireless callers..."<sup>7</sup> As set forth above, CPN is not "accurate and reliable" call detail information with respect to wireless callers that are roaming. Accordingly, SWBT cannot determine the jurisdiction of these calls based on CPN. Conversely, if there is reliable information in the call detail showing the true originating point of the call, then it follows that SWBT can determine the jurisdiction and should do so.

SWBT can determine the jurisdiction of wireless-originated calls by using other, more reliable numbers in the call detail record, such as those contained in the jurisdictional indicator parameter, or "JIP" field. The JIP field contains NPA/NXX calling numbers showing the originating cell site or MTSO of wireless-originated calls.<sup>8</sup> It provides information that is closest to the true originating location of the wireless-originated roaming calls. While the CPN reflects the telephone number of the mobile phone being used but has nothing to do with the location of the caller, the JIP contains calling numbers that closely reflect the actual location of the caller. Indeed, almost 98% of all MTSOs serve customers located within the same state, proving (with very few exceptions) that using JIP is an accurate method of determining jurisdiction.

In this regard, SBC mischaracterizes WilTel's June 23, 2004 presentation, docketed in CC Docket No. 01-92, in which WilTel argued that ILECs should be directed to use JIP or

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<sup>7</sup> SBC Petition at 9.

<sup>8</sup> Crucially, populating the JIP field with the NPA/NXX of the originating switch or MTSO is and has been a standard industry practice. See *Alliance for Telecommunications Industry Solutions, ATIS-0300011, Network Interconnection Interoperability (NIIF) Reference Document, Part III, Installation and Maintenance Responsibilities for SS7 Links and Trunks* ("ATIS Study"), at 21. WilTel estimates that over 70% of all calls contain switch information in the JIP field. That percentage should increase as more carriers comply with industry standards.

Originating Local Routing Number data, rather than telephone numbers, to determine the correct jurisdiction of wireless-originated traffic. WilTel did not, however, contend that the matter required a change in the Commission's rules or policies; to the contrary, WilTel specifically noted that the ILECs' current practice of relying on calling party numbers for wireless roaming calls "may not be consistent with [existing] LEC tariffs."<sup>9</sup> WilTel merely sought a Commission directive regarding carriers' transmission and acceptance of certain calling parameters, in order to more accurately implement existing rules, policies, and tariff provisions. The fact that WilTel filed this presentation as an *ex parte* in a rulemaking docket does not mean a rule change is needed to achieve the outcome we seek, notwithstanding SBC's misstatement to the contrary.

Where SWBT can determine the jurisdiction of a wireless call using JIP, then FCC rules and the Tariff require SWBT to base jurisdiction on such information. SBC concedes this point by seeking to apply CPN only "in those instances in which long distance carriers provide no accurate and reliable information in call detail records as to the geographic location of wireless callers".<sup>10</sup> To the extent that SBC argues that it is entitled to base the jurisdiction on CPN even if it uses another call detail number to determine the jurisdiction, the Commission should find that the "calling number" does not refer to CPN but rather to any number that is contained in the call detail records upon which SWBT basis its jurisdictional determination or to the person making the call. The *Local Competition Order*, cited by SBC, supports this outcome.<sup>11</sup> The Commission determined that the correct jurisdictional categorization of calls from wireless customers depended on the actual physical location of those customers when the calls originated, and recognized that traffic studies were an appropriate means to determine the jurisdiction of

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<sup>9</sup> Letter from Adam Kupetsky, Director of Regulatory, WilTel Communications to Marlene Dortch, Secretary, Federal Communications Commission, CC Docket Nos. 95-116 and 01-92 (June 23, 2004), at 8.

<sup>10</sup> *SBC Petition* at 9.

<sup>11</sup> *Id.* at 7.



calls for rating purposes.<sup>12</sup> This decision further shows that the Commission believes jurisdiction can be determined by looking at actual traffic routing rather than CPN.

Nevertheless, if the Commission determines that SWBT's tariff allows it to use CPN to determine jurisdiction on wireless-originated calls notwithstanding arguments to the contrary, then the Commission must immediately require SWBT to file a new tariff that provides for a process that accurately determines the jurisdiction of these calls. Federal Courts and the Commission have held that telecommunications begins where the call is made and ends where the call is completed.<sup>13</sup> As set forth above, CPN clearly does not accurately portray the originating location of the call. To the extent that SWBT's Tariff nonetheless gives it the right to use CPN, the Tariff provision is clearly unlawful and must be suspended and replaced with a lawful provision that meets the Commission's requirements for determining jurisdiction.

If, on the other hand, the Commission accepts Global Crossing's argument that SWBT cannot determine the jurisdiction of the call based on the call detail records and that Global Crossing is entitled to submit a PIU factor based on the network entry point, WilTel suggests that the Commission provide detailed guidance regarding that process. First, the Commission must specify that the PIU would be based on the "state in which the call left the originating [carrier's] network and entered the IXC network" or the network entry point of the first IXC to carry the call from the end user.<sup>14</sup> Second, the Commission should specify that Global Crossing file a separate PIU for wireless-originated traffic rather than including wireless traffic in the PIU it files for traffic lacking CPN. Such a separate PIU filing is consistent with the language in

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<sup>12</sup> *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, First Report and Order*, CC Docket No. 96-98, FCC 96-325, 11 FCC Rcd 15,499 ¶ 1044 (Aug. 8, 1996). Although the FCC said that the location of the initial cell site was the appropriate location for determining jurisdiction, the industry recognizes that the MTSO would also be appropriate. See, e.g., *ATIS Study*, note 8, *supra*.

<sup>13</sup> *Thrifty Call, Inc. Petition for Declaratory Ruling Concerning BellSouth Telecommunications, Inc. Tariff F.C.C. No. 1*, CCB/CPD File No. 01-17, *Declaratory Ruling* (released November 12, 2004), ¶ 15 (citing *Bell Atlantic Telephone Companies v. FCC*, 206 F.3d 1, 4 (D.C. Cir. 2000)).

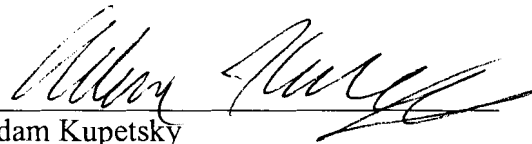
<sup>14</sup> *Thrifty Call*, at ¶ 16.

SWBT's tariff and would facilitate SWBT's auditing of the filed PIU factor. Finally, the Commission must reinforce the requirements not to manipulate call detail records and CPN in order to falsify the originating and/or terminating locations of the call.

### **CONCLUSION**

For the reasons set forth herein, WilTel urges the Commission to deny SBC's Petition to the extent it would allow SWBT to base jurisdiction and rating of all wireless-originated traffic on CPN. The Commission should require SWBT to use the calling number information contained in the JIP fields in the call detail records to determine jurisdiction, consistent with the provisions of its Tariff. Alternatively, the Commission should grant Global Crossing's Petition but provide details regarding the use of filed PIUs for wireless-originated calls. Finally, the Commission should initiate a (or incorporate into an existing) proceeding to classify all wireless-originated traffic as jurisdictionally interstate, and determine that, to the extent such traffic is subject to access charges, the correct charges are those in the interstate (not intrastate) tariffs.

Respectfully submitted,



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January 7, 2005